

CENTRAL ADMINISTRATIVE TRIBUNAL, CUTTACK BENCH

Original Application No.487 of 1993
Cuttack this the 30th day of March, 1998

Smt.M.Sony

Applicant(s)

-VERSUS-

Union of India & Others

respondent(s)

(FOR INSTRUCTIONS)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? Yes.
2. Whether it be circulated to all the Benches of the Tribunal ? no.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
30/3/98

S.K. Agarwal
(S.K.AGARWAL)
MEMBER (JUDICIAL)
30/3/98

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THE HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
THE HON'BLE SHRI S.K.AGARWAL, MEMBER(JUDICIAL)

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Smt. M.Sonny,
Wife of Sri M.RamaMurty,
Section Officer
Pen-II Section
Office of Accountant General (A&B)
Orissa, Bhubaneswar

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Applicant

By the Advocate:

M/s.P.V.Ram
dasP.V.B.Rao

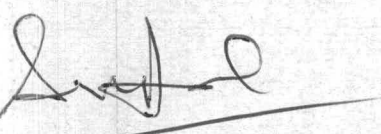
-VERSUS-

1. Union of India,
represented by the Comptroller & Auditor
General of India,
10, Bahadur Shah Zafar Marg,
New Delhi
2. Deputy Comptroller &
Auditor general of India
10, Bahadur Shah Zafar Marg,
New Delhi
3. Accountant General (A&E)
Orissa, Bhubaneswar

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By the Advocate:


Respondents
Mr.Ashok
Mohanty
Sr.Standing
Counsel
(Central)



ORDERMR.S.K.AGARWAL, MEMBER(J)

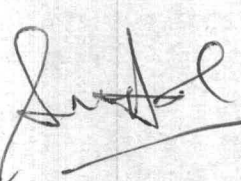
This is an application under Section 19 of the Administrative Tribunals Act, 1985, with the prayer that Respondent No.3 be directed to give effect to the promotion of the applicant to the post of Assistant Accounts Officer with effect from 1.1.1992.

2. In brief the facts of the case as stated by the applicant are that the applicant entered in the service on 27.12.1975 as a Clerk in the Office of the Accountant General, Orissa, Bhubaneswar. The applicant was promoted as Section Officer with effect from 29.7.1988 in the Office of Accountant General (A&E), Orissa, Bhubaneswar. It is submitted by the petitioner that she has always been sincere and performing her duties with utmost devotion, but it was her misfortune that in the year 1992 she has been overlooked in the matter of promotion to the next higher post, viz., Assistant Accounts Officer and many of her juniors have been promoted, but the applicant was denied of such benefit. Accordingly, she made representations to the Accountant General (A&E), Orissa Bhubaneswar on 25.2.1992 which is at Annexure-1 to the application and vide order dated 23.6.1992 she was informed accordingly. It is stated that the A.G.(A&E) in the Office Memorandum dated 30.3.1992 initiated disciplinary proceedings under Rule 14 of



C.C.S.(C.C.A.)Rules, 1965 and memo was served on the applicant. The three articles of charge, in effect, relate to over payment of Rs.40,000 to Sri Kasinath Rath, Divisional Accounts Officer, Grade-II(Retired) towards Provident Fund and it is stated that there was no observance of G.P.F. rules and instructions by the applicant and the disciplinary proceeding is now pending. The applicant also made representation to the appellate authority, viz.,Deputy Comptroller and Auditor General, New Delhi for redressal of her grievance, but the said representation was rejected. Hence she has filed this application.

3. On behalf of the respondents counter was filed. In the counter it is submitted by the respondents that applicant's name for promotion to the cadre of Assistant Accounts Officer was kept in a sealed cover owing to grave misconduct committed by the applicant when she was working as Section Officer in PAO-II Section in the Office of the Accountant General(A&E). It ^{is} submitted a decision to initiate disciplinary proceeding against the applicant was taken by the competent authority and in similarly situated cases of sealed cover procedure, Hon'ble Supreme Court upheld the sealed cover procedure as legal. Therefore, the order passed by the respondents are valid. It is further submitted that consequent upon the findings of the preliminary investigation, the disciplinary authority has ordered to initiate the



departmental proceedings against the applicant as a result of which Annexures-3 and 4 of the application were served on the applicant. It is also submitted that Comptroller and Auditor General of India, after due consideration has rejected the representation of the applicant. Therefore, the sealed cover procedure adopted by the respondents is in order and in this way on the basis of the averments made in the counter, the Respondents have requested the Tribunal to dismiss the Original Application with costs.

4. The sole question in this case is whether the authority is justified in adopting the sealed cover procedure when charge memo was not issued to an employee.

5. Learned counsel for the petitioner submitted that the sealed cover procedure can only be adopted when charge memo in a disciplinary proceeding is issued. In support of his contention, learned counsel for the petitioner has referred AIR 1991 SC 2010 (Union of India v. K.V. Janakiraman). He has further argued that the principle adopted in Janakiraman case has also been followed in Delhi Development Authority v. H.C. Khurana (AIR 1993 SC 1165) and A.I.R. 1993 SC 1165.

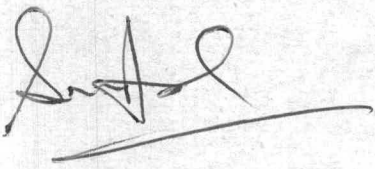
6. On the other hand learned Senior Standing Counsel submitted that since the D.P.C. got information that the department has taken a decision to initiate

the disciplinary proceedings against the person concerned, the rule of sealed cover procedure is attracted.

6. We have given our thoughtful consideration to the rival contentions of learned counsel for both sides and perused the whole record and written submissions filed by the learned counsel for the applicant.

7. It is not in dispute that the decision to initiate disciplinary proceeding against the applicant was taken on 24.12.1991 and the information to this effect was sent to the DPC on the same day. The DPC also met on the same day, i.e. 24.12.1991 and upon this information adopted the sealed cover procedure. It is also not in dispute that charge memo to the applicant was issued on 30.3.1992 and before issuance of this charge memo this sealed cover procedure was adopted in the instant case.

8. In K.Ch.Venkata Reddy v. Union of India (1987(3)A!T!C! 174(FB)) it was observed as under:



"Whenever a government servant is accused of any misconduct and a departmental proceeding is initiated, the procedure contemplated by the relevant rules have to be followed in the conduct of the disciplinary enquiry. There is naturally a time lag between the initiation of the proceedings and its ultimate conclusion which may either result in the imposition of a penalty or in the exoneration of the official concerned. In the interval it may be that he may have promotional chances. If he is promoted pending the said proceedings, the public servant will suffer and there will be a public ridicule. At the same time, there is a withholding of promotion on the ground of

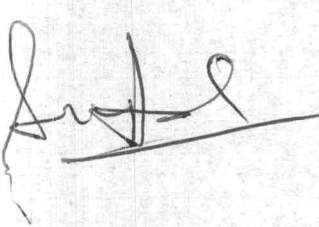
pendency of the proceedings, the officer concerned would stand seriously prejudiced in the event of his being ultimately exonerated or acquitted of the charges."

The Full Bench further observed that:

"It is to provide for such a contingency, the sealed cover procedure has been thought of and executive instruction had been issued in that regard. On a due consideration of the matter we are inclined to take the view that it is open to the Government to adopt the sealed cover procedure provided the interest of the official concerned is sufficiently and fully safeguarded in the event of his being ultimately exonerated in the departmental proceedings."

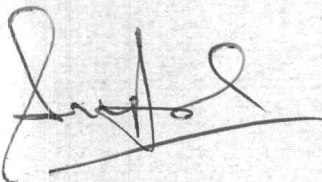
This judgment defines the object of sealed cover procedure in detail.

9. In Union of India v.K.V.Jankiraman it was observed that sealed cover procedure is only resorted after the charge memo has been issued. In the case of Delhi Development Authority v.H.S.Khurana, the Hon'ble Supreme Court has clarified that service of a charge-sheet on a Government servant is not a part of the decision-making process of the authorities for initiating disciplinary proceedings. They took into consideration the O.M. dated 14.9.1992 and considering the facts of the case have held that once a decision has been taken to initiate disciplinary proceedings and charge-sheet has been prepared, its non-service on the Government servant will not make any difference and it would cover under "decision to initiate disciplinary proceedings was taken" to attract



sealed cover procedure. Therefore, if the competent authority has taken a conscious decision to initiate disciplinary proceedings on the basis of misconduct alleged against a Government servant but ultimately charge-sheet has not yet been drawn or despatched, can it be said that framing of charge-sheet and despatching the same are only in furtherance of such a decision and that situation may be included in the term "to initiate disciplinary proceeding.? But it cannot be said that non framing of a charge-sheet ~~or~~ its despatch at a particular point of time or date will either take the Government official outside the sealed-cover procedure or entitle him to take the plea that since formal charge-sheet hasnot been framed, the disciplinary proceedings cannot said to have been initiated.

10. In the instant case since a decision has been taken to initiate disciplinary proceddings against the applicant and it has been communicated to the D.P.C.,therefore, sealed cover procedure was rightly adopted. Even in the case of Delhi DevelopmentAuthority vs.H.C.Khurana, the Apex Court stressed on the aspect of decision having been taken. To quote:"These words clearly indicate that the sealed-cover procedure was applicable in cases where'disciplinary proceedings are pending' in respect of a Government servant or 'a decision has been taken to initiate disciplinary proceedings' ...Thus, on a



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decision being taken to initiate disciplinary proceedings, the guidelines attract the sealed-cover procedure". This aspect has also been considered in a case (Union of India v. Kewal Kumar) reported in 1993(24) ATC 717. In this case Hon'ble Supreme Court of India considered the ratio decidendi of a leading case (Union of India v. K.V.Janakiraman) and distinguished by saying that in Janakiraman case it has been pointed out that the sealed cover procedure is to be followed where a Government Servant is recommended for promotion by the DPC, but before he is actually promoted, if he is either placed under suspension or disciplinary ~~action~~ actions are taken or a decision has been taken to initiate disciplinary proceedings or criminal prosecution is launched or sanctions for such prosecution have been issued or a decision to accord such sanction has been taken, thus the sealed cover procedure is attracted even when a decision has been taken to initiate the disciplinary proceedings. The object of following sealed cover procedure has been very well indicated in Delhi Development Authority v. H.C.Khurana on April, 7, 1993. Therefore, in the case of Union of India v. Kewal Kumar, as stated above, Hon'ble Supreme Court has made it very clear that if disciplinary proceedings are initiated against the applicant or a decision has been taken to initiate disciplinary


proceedings against the applicant, rule of sealed cover procedure is attracted.

11. In the instant case a decision to initiate disciplinary proceedings for imposing major penalty has been taken on 24.12.1991 although a formal charge-sheet was served on the applicant at a later date, i.e. 30.3.1992. Therefore, according to the facts and circumstances of this case we are of the considered view that sealed cover procedure was rightly adopted by the respondents and the action of the respondents in the present case cannot be held to be illegal and without jurisdiction.

12. On the basis of above all, we are of the opinion that the applicant is not entitled to any relief sought for at this stage.

13. Therefore, we dismiss the Original Application filed by the applicant with no order as to costs.


(SOMNATH SOM)
VICE-CHAIRMAN 30.3.98


(S.K. AGARWAL)
MEMBER (JUDICIAL) 30/3/98

B.K.Sahoo//C.M.